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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 3241 of 2007

Date of decision: 27.9.2007

Smt. Bimla and another **...Appellants**

Versus

Jai Pal and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Dr. Parveen Hans, Advocate for the appellants.

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RAJESH BINDAL, J.

Plaintiffs are in second appeal before this Court against the concurrent findings of fact whereby suit filed by them for declaration and permanent injunction claiming to have become owner in possession of the land measuring 55 Bighas 5 Biswas by virtue of their long, continuous and hostile possession for the last more than 12 years.

Heard learned counsel for the appellants and perused the judgments passed by both the Courts below.

On the pleadings of the parties, the primary issue framed by learned trial Court was as to whether the possession of the appellants/plaintiffs on the suit land is open, continuous and hostile for the last more than 12 years, which had ripened into ownership by way of adverse possession. The claim made in the suit was that the land in question was shown to have been purchased by the predecessors-in-interest of the respondents/defendants in an auction to realize the decretal amount but infact the possession was never delivered to them. Earlier the predecessors-in-interest of appellants/plaintiffs were in possession and now they are. To prove their case, evidence in the form of witnesses of the owners of land in the neighbourhood was produced. However, considering the evidence on record, learned Courts below came to conclusion that infact during

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execution of decree in which land was purchased by predecessors-in-interest of the respondents/defendants, it was specifically recorded that possession of the land had been delivered to them and it was thereafter only that execution petition was disposed of as satisfied. Even copies of the revenue record brought on record clearly show possession of the respondents/defendants. One or two stray entries in the Khasra girdawari in favour of appellants/plaintiffs were not sufficient enough to prove their long and continuous possession of more than 12 years. Even in the proceedings before the revenue authorities, the Financial Commissioner in an order passed in a revision on March 5, 1994 held that the appellants/plaintiffs had failed to prove their possession on the land in dispute. This fact was even concealed by the appellants/plaintiffs while filing the suit in October, 2002 as the order had been passed by the Financial Commissioner on March 5, 1994 whereas it was mentioned in the suit that revision before Financial Commissioner was still pending. In a subsequent order passed on December 19, 2002 by the Assistant Collector IInd Grade , Loharu, it was found that predecessors-in-interest of Hoshiar Singh son of Ramsawrup have been proved to be in possession of the suit land. The claim made by the appellants/plaintiffs that land in dispute came to their share in a family settlement on June 15, 1958 was also not proved on record. Infact, ultimately the Courts below found that there were large scale contradictions even in the evidence led by the appellants/plaintiffs, which demolished the case pleaded by them besides the factum of concealment of material facts. Once the appellants/plaintiffs had failed to prove their case as claimed by them in the suit, in my opinion, both the Courts below have not erred in dismissing the same. Even before this Court, the arguments are same as were addressed before the Courts below but the learned counsel for the appellants/plaintiffs has not been able to successfully controvert the findings of the Courts below wherein it was found that even in the evidence led by the appellants/plaintiffs, there were large scale discrepancies, which itself were good enough to non suit the appellants/plaintiffs, when the Local Commissioner appointed also stated

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that appellants/plaintiffs were merely in possession of a room constructed in small portion which did not mean that they are in cultivating possession of the entire land.

Accordingly, while concurring with the view expressed by the Courts below, I do not find any merit in the present appeal and the same is dismissed in limine.

September 27, 2007 **(Rajesh Bindal)**
Pka **Judge**